

Attorney Docket No.: **BERN-0040**  
Inventors: **Bernstein et al.**  
Serial No.: **09/913,697**  
Filing Date: **January 28, 2002**  
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**REMARKS**

Claims 1-8 and 10 are pending in the instant application. Claims 1-8 and 10 have been rejected. Claims 1, 2, 5, 6 and 8 have been amended. Support for these amendments is provided in the specification at page 4, line 13, through page 5, line 3. Claims 7 and 10 have been canceled without prejudice. No new matter is added by these amendments. Reconsideration is respectfully requested in light of these amendments and the following remarks.

**I. Rejection of Claims 1-6 and 8 under 35 U.S.C. § 102(e)**

The rejection of claims 1-6 and 8 under 35 U.S.C. § 102(e) over Lezdey et al. has been maintained. The Examiner suggests that arguments presented by Applicants in the response filed April 16, 2003 were unpersuasive because there is no mention of milk in the rejected claims.

Applicants respectfully traverse this rejection.

Applicants respectfully disagree with the Examiner's characterization of Applicants' argument in the response filed April 16, 2003. While Applicants stated that the experiments described in paragraph 6 and 7 of Dr. Bernstein's Declaration, as well as the figure of Exhibit C, demonstrate that the combination

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of the milk vehicle and the serine protease inhibitor alpha 1-antitrypsin provided better protection of the skin than milk vehicle alone, this is merely a portion of Applicants' argument. As also clearly stated in the argument presented by Applicants in the April 16, 2003 response and evidenced by the data in the Declaration, when the serine protease inhibitor alpha 1-antitrypsin was added to the milk vehicle, the protective effect increased from 1.5 fold to 11.5 fold, a huge increase demonstrative of a composition containing the serine protease inhibitor alpha 1-antitrypsin providing more protection against photodamage than vehicle alone. Those of skill in the art would understand and interpret these data to be indicative of a composition containing the serine protease inhibitor alpha 1-antitrypsin alone to provide photoprotection, regardless of the vehicle used.

However, in an earnest effort to advance the prosecution of this case, Applicants have amended claims 1-6 and 8 to include the milk vehicle. Support for this amendment is provided in the specification at page 4, line 13, through page 5, line 3.

Since Lezdey et al. does not disclose the use of composition containing the serine protease inhibitor alpha 1-antitrypsin in milk, this reference cannot anticipate these claims. See MPEP

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2131. Accordingly, withdrawal of this rejection of claims 1-6 and 8 over the teachings of Lezdey et al. is respectfully requested.

## **II. Rejection of Claims 7 and 10 under 35 U.S.C. § 103**

Claims 7 and 10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Horiuchi et al. (JP 02-229103A; Abstract only). The Examiner suggests that Horiuchi's teaching of use of an oligosaccharide derived from milk in a skin cosmetic renders obvious Applicants' use of milk in a composition and method which protects against photoaging. Specifically, the Examiner suggests that this prior art reference's teachings of the cosmetic imparting moistness to the skin and maintaining skin healthy and safe is inclusive of protecting the skin against photoaging, sunburn, etc.

Applicants respectfully traverse this rejection.

As discussed in detail in the patent application as well as personally with the Examiner in the Interview conducted January 28, 2003, photoaging resulting from chronic sun-exposure is a complex process associated with major alterations in the deposition of abnormal elastic material termed solar elastosis. It has been shown that solar elastosis is accompanied by elevations in elastin and fibrillin mRNAs and elastin promoter

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activity. In no way is mention in an abstract that an oligosaccharide derived from milk keeps the skin healthy and safe suggestive to one skilled in this art field that the composition would be useful in the treatment of photoaging.

However, in an earnest effort to facilitate the prosecution of this case, Applicants have canceled claims 7 and 10, without prejudice, thus mooting this rejection.

Withdrawal of this rejection is therefore respectfully requested.

### **III. Supplemental IDS**

Applicants are providing herewith a Supplemental IDS listing references recently identified by the European Patent Office in a Search Report received August 6, 2003 in a related co-pending European patent application.

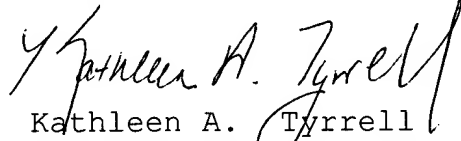
### **IV. Conclusion**

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly,

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favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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